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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962.

No. 545

CHARLES W. JAMIESON,

Appellant,

vs.

CHICAGO TITLE AND TRUST CO., a corporation of Illinois, and WILLIAM H. AVERY, JOHN W. BAIRD, LAIRD BELL, ALBERT Y. BINGHAM, JOHN D. BINKLEY, CHESTER R. DAVIS, GEORGE H. DOVENMUEHLE, JAMES C. DOWNS, JR., PERCY B. ECKHART, GEORGE P. EDWARDS, NEWTON C. FARR, JOSEPH B. FLEMING, PAUL W. GOODRICH, J. PARKER HALL, HAROLD A. MOORE, LEO J. SHERIDAN, FOREST D. SIEFKIN, GARDNER H. STERN and JOSEPH D. STOCKTON, directors and JOHN WADDELL, its Treasurer,

Appellees.

ON APPEAL FROM THE ILLINOIS SUPREME COURT

JURISDICTIONAL STATEMENT

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UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA keview 5-6561

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Appellees.

JURISDICTIONAL STATEMENT PURSUANT TO RULE 15 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

A. OPINION AND ORDERS BELOW.

The order of the trial court dismissing suit in question on February 2, 1961, the opinion of the Appellate Court of the First District of Illinois holding with the trial court, on February 9, 1962 and the order of the Illinois Supreme Court entered May 24, 1962 denying petition to appeal the judgment of the Appellate Court to said Supreme Court will be found in the Appendix hereto as exhibits No. 1, 2 and 3.

B. GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT ARE INVOKED.

Constitutions being prospective as are most legal statutes; herewith is an appeal to the Supreme Court of the United States that this Honorable Body will invoke and apply the Fourteenth Amendment to the Constitution of the United States, particularly that part thereof namely "nor shall any State deprive any person of * * * property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws", in reversing the final decree of the Appellate Court in case No. 48469 supporting the final order of the trial court in case 60 S 9097 Superior Court holding as constitutional Sec. 157.156 of Chap. 32 (hereinbelow set forth on page 1371 of the Illinois Bar Ass'n. Edition of Illinois Statutes, Vol. 1) despite the fact that said section had been deemed void and unconstitutional by the appellant in both the trial and the appellate courts; the appellant being supported in his position by the dictates of Art. 4, Sec. 13 of the Constitution of Illinois set forth on page 11, Vol. 1 of said Statutes, as well as by *Mayhew v. Nelson*, 346 Ill. 381 (387), 178 N.E. 921.

An unwarranted holding against appellant in his several charges of far-reaching infractions of parts of the Illinois Statutes in Chap. 32 thus far rendered retroactive as against the Constitution of the United States by said Sec. 157.156 of said Chap. 32, the Business Corporation Act.

This Act, Chap. 32 was spread on the statute books July 13, 1933. Sec. 3 or 157.3 is the Substantive Law of this Chapter 32 and reads, in part, (sufficient for the matter in question) "Purposes. Corporations for profit may be organized under *this* (emphasis appellant's) Act for any lawful purpose or purposes, except * * *" (the remainder of Sec. immaterial here).

The disturbing, upsetting, unconstitutional section of said Chap. 32 is Sec. 157.156 and reads "Application to Existing Corporations Organized Under General Laws. The provisions of this Act shall apply to all *existing* (emphasis appellant's) Corporations, including public utility corporations, organized under any general laws of this State providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under *this* (emphasis appellant's) Act."

This sullying act namely Sec. 157.156 would permit corporations organized before July 13, 1933 to buy and sell common stocks of foreign corporations promiscuously regardless of whether or not they had such rights and powers by their Charters, see Sec. 157.5 to be found on page 1333 of same statutes.

The initial test applied to this passage, namely Sec. 157.156 shows same not qualified to withstand a resort to the *ejusdem generis* doctrine because of its outstanding incongruity. A statute is retrospective where it changes the legal effect of antecedent transactions or impairs vested rights.

Myers v. *Shields*, 61 F. 743 (731).
Oregon v. *Oregonian, etc.*, 130 U. S. 1 (21).
Penniger v. *Neff*, 95 U. S. 714 (733-4).
Hills v. *Glasgow, etc.*, 41 F. 610 (618).

The Federal Code provisions believed to confer on this court jurisdiction of the Appeal is Title 28, United States Code, Sec. 1257(2); F.C.A. Title 28, Sec. 1257(2).

A moot question is not only not presented here but a ruling that Sec. 156 or 157.156 is unconstitutional would be state wide in its effect as against promulgating poorly conceived, ill-advised legislation and would relieve uncertainty in the minds of security holders both within and without the State of Illinois (Please see exhibit A appended).

C. QUESTION PRESENTED

The question presented is whether, in the case at bar, a corporation organized under the General Corporation Act, long before the Business Corporation Act, Chap. 32 of the Illinois Statutes was the law, that is July 13, 1933, with no rights given and granted by its charter to traffic in foreign common stocks, can in defiance of Secs. 157.3, 157.5, 157.41(c) and 157.52(c) of Chap. 32, of said Act, traffic in foreign common stock of Chas. Pfizer & Co., Inc. said corporation Chicago Title and Trust Co. purportedly relying on the heretofore mentioned Sec. 157.156 of said Chap. 32 and be permitted to prevail in this illicit intercourse. 157.41(c) part of Dividend Act and 157.52(c) being part of Amendment Act being found in exhibit 4 of appendix.

Furthermore, the fainting effect upon many passages of said Chap. 32 is to render retrospective those passages thereby threatening the safety of securities, thus causing anxiety to every holder of securities outside of as well as within the State of Illinois. Thus, combatting these jeopardizing retroactive attempts at changing laws in the interests of an obviously self-interested minority, one needs the support of "due process" guaranteed by the Constitution of the United States, to insure the citizens impartiality.

Visscring, etc. v. *Annunzio*, 1 Ill. 2d 108, 115 N.E. 2d 306.

Smith, Retroactive Laws and Vested Rights, 5 Tex. L. Rev. 231.

Appellant believes that the questions presented by this appeal are far-reaching, substantial and of public interest and importance; that which follows may confirm this position.

Statute sections involved will be found in Appendix under exhibit No. 4.

D. STATEMENT OF THE CASE.

Defendant-appellee, Chicago Title and Trust Co., a corporation of Illinois, by its Charter is empowered to examine titles to real estate, make abstracts of title and render opinions thereon; to guarantee and insure its work and to accept and execute trusts. This is the extent of its rights and powers.

Said Title Co. was incorporated long before the Business Corporation Act was spread on the statute books of the State of Illinois, namely July 13, 1933.

In 1943 and 4 said Title Co., secretly and against the knowledge of its stockholders and therefore against the law, bought block upon block of Chas. Pfizer & Co., Inc. common stock for company account (Please see exhibit A). These purchases were never disclosed on the Company's annual or interim financial reports, contrary to law.

In 1959, by letter to the Title Co. stockholders (exhibit A), the president of said Title Co. advised of the purchases of this said Pfizer common stock back in 1943 and 4. Later, in 1959 plaintiff-appellant, a stockholder of said Title Co. was advised (Please see exhibit B) that the Board of Directors of said Title Co. had declared a dividend of part of its holdings of said Pfizer common (contrary to statutes).

These Pfizer purchases were, contrary to the provisions of the Illinois Statutes, set forth in Sec. 157.3 and 157.5 of Chap. 32 set forth in Substantive Provisions, pages 1332-3 of State Bar Association Edition of Statutes 1961 or, in defiance thereof.

The Title Co. attempted distribution of some of this Pfizer common to appellant; this, said appellant declined to accept and returned said stock certificate to the Title Co. with a letter advising that said stock was not acceptable to appellant as a Title Co. dividend.

The funds with which said Title Co. had illegally purchased this stock in question were funds in which appellant, as a stockholder of said Title Co., had an interest; these funds and all assets of the said Title Co. being trust funds in the possession of said Title Co. for and in the interests of appellant and others as stockholders of said Title Co. for their ultimate use and benefit as *cestuis que trustent* with the Title Co. as trustee; a constructive trust.

Primeau v. *Granfield*, 184 Fed. 480,
Marcus v. *Otis*, 168 F. 2d 649 (654).

Appellant's key case in this controversy, both decisions by Mr. Justice Learned Hand.

For this breach of trust in said Title Co. as trustee, for jeopardizing the security of appellant's future as a Title Co. stockholder, appellant, in writing, demanded his pro rata share of all said Pfizer common ever purchased by said Title Co. together with all increments including stock previously issued by said Pfizer Co. as stock dividends and cash dividends and interest on said cash dividends withheld from plaintiff through the years since 1943 to date.

After waiting a reasonable time for appellee, the said Title Co., to comply with said legally, orderly demand and no response, appellant instituted suit in the Superior Court of Cook County Illinois under case No. 60 S 9097 *Jamieson* v. *Title Co. et al*, wherein appellant alleged a beneficial ownership in all undivided profits of said Title Co. which is a trust fund with the Title Co. as trustee for the benefit of appellant and other stockholders pursuant to and in the interests of cash regular and extra dividends when and as declared and for no other purpose; that the trafficking in Pfizer common was forbidden by the statutes to trust companies and insurance companies in particular; that

trafficking in said Pfizer common was categorized as speculative and further forbidden, by the statute, to trust companies and corporations in any trust capacity; that when appellant invested in Title Co. stock, appellant knew the investment status and the Title Co. by its charter and appellant had no intention of placing venture capital then or in the future; that appellant's claims are further based and predicated on an implied contract that said Title Co. would hold all undivided profits in trust for the use and benefit of appellant in distribution in dividends and extra dividends all in cash and would hold all said assets inviolate against speculation and other hazardous undertakings and trafficking in improper, unworthy, unseasoned and legally forbidden securities. (Please see complaint in clerk's transcript of trial proceedings.)

That due to this illegal trafficking in Pfizer common with trust funds as a media, there has been a breach of that trust and confidence reposed in said Title Co. as trustee for which violation the law has long since provided penalties.

Constitutions are prospective in intent and purpose. The Business Corporation Act of the Statutes of the State of Illinois as is definitely shown by its "Substantive Provisions" Sec. 3 or 157.3 found on page 1332 of the first volume of the State Bar Association Edition of 1961 (identical with prior years), is definitely prospective in intent and purpose.

Contrary to the intention of appellant, there was no trial on the merits of the case. From the inception, the trial court maneuvered toward a declaratory judgment apparently not familiar with the office of such and, as a result violated the "due process" clause of the Fourteenth Amendment of the Constitution of the United States as

appellant was not permitted to produce witnesses brought into court by *subpoena duces tecum*, in fact those witnesses, employees of the Title Co. namely the Title Co. secretary and treasurer, were never in court; nor was appellant permitted to introduce evidence.

> "* * * it is inexpedient to determine grave constitutional questions upon a demurrer or an equivalent motion, if a reasonable likelihood that the production of evidence will make the answer to the questions clearer" 293 U. S. 194 (213) *Borden Mfg. v. Baldwin, etc.*

Decision by Mr. Justice Cardozo, Mr. Justice Stone concurring. This suppression of evidence constituted a denial of due process of law guaranteed by the Constitution of the United States.

> *Harmony v. Feathers*, 353 Ill. 378 (386) 187 N.E. 432.
>
> *Thompson v. People, etc.*, 410 Ill. 256 (260), 102 N.E. 2d 315.

The trial court heard plaintiff through his first count only, then ordered the rest of the case briefed and the participants to return on a day certain together with witnesses, and evidence in their hands, previously called into court by *subpoena duces tecum* (Please see transcription of that which transpired in the trial of the case particularly "Report of Proceedings" and, also you will note that that order to return to court on a day certain with witnesses and evidence does not appear in the "certified transcript" nor has appellant since been able to find said order in the court files.)

On said day certain February 2, 1961, without an opportunity for witnesses to be heard (they were not in court anyway), evidence to be presented nor chance for oral

argument (the court wouldn't permit the production of evidence) the court dismissed the suit for "want of equity". (Please see exhibit No. 1 appended for court order.)

Appellant never had his day in court; a review of "Report of Proceedings" might offer enlightening reading.

Visscring v. *Annuzio* again, "that is to say, insure to the citizen an impartial trial."

Appellant appealed to the Appellate Court of Illinois for the First District case No. 48468. Appellant cited two Illinois cases where "evidence can be heard for the first time in the appellate court." The said Appellate Court would have none of it and, held with the trial court and in doing so stressed the aforementioned Sec. 157.156 of Chap. 32 of the Business Corporation Act as constitutional despite the holding in the previously set up *Mayhew* v. *Nelson* case, 346 Ill. 381 (387) and, against the prohibition in Art. IV, Sec. 13 of the Constitution of the State of Illinois which reads, in part, sufficient for the matter at hand "No act hereafter passed shall embrace more than one subject and that shall be embraced in the title." The Appellate Court supported the trial court despite four solid objections to the previous dismissal which objections were supported by five celebrated cases directly in point. (Please see details of said case and court's opinion appended as exhibit No. 2). Court did not cite 157.156 in full.

Appellant petitioned the Supreme Court of the State of Illinois for leave to appeal, citing that petitioner was within the case of persons with respect to whom the law involved is unconstitutional or the acts illegal and the defects complained of injure appellant and every person, firm or corporation owning or holding securities underwritten by every corporation of Illinois or legally permitted

to do business in the state of Illinois if said corporations were incorporated of record in Illinois before July 13, 1933.

Illinois v. Centralia, etc., 11 F. Supp. 874 (877); an Illinois case.

Petition was denied petitioner with no reason therefor being given (Please see order appended as exhibit No. 3 under Illinois Supreme Court No. 37160).

"That a constitution should operate prospectively is a rule well settled by abundant authority.

Retrospective legislation is commonly objectionable in principle and apt to result in injustice and it is a sound principle of construction which refuses to imply an intent to exact it." Cooley on Constitutional Limitations.

Appellant has been permitted to produce evidence at no time. He has plenty of evidence reserved for briefs.

Due process of law means a law which proceeds on inquiry and renders judgment only after trial, is but another way of saying that every man's right to property is to be disposed of in accordance with those fundamental principles which were in existence when our Constitutions were adopted.

Webster's argument in the *Dartmouth College* case, 4 Wheat. 518 (581).

Should the opponent with the most money prevail? No, said Mr. Justice Douglas in *Moore v. Mead's, etc.*, 348 U. S. 115.

This appeal is no bucolic complaint but, on the contrary, is nation-wide in effect wherever the above-mentioned Illinois corporation securities are held.

The United States does not countenance the purchase of the stock of one corporation by another corporation; upon the purchase of the stock of one corporation by another corporation divestiture is in order; the Du Pont case in 353 U. S. 586 (612-620).

In spreading this particular passage on the Statutes, *i.e.*, Sec. 157.156, the economic, political and social background of the legislators might be considered, as well as the courts, considering the gravity and substance of this said section as good law, in the light of the constitutional principles involved. There, too, pressure of organized interests is a grave influence in shaping legislation.

These influences are not brought to bear upon the United States Supreme Court.

Respectfully submitted,

CHARLES W. JAMIESON,
Appellant, an attorney, pro se.

EXHIBIT A

CHICAGO TITLE AND TRUST COMPANY

111 W. Washington St. Telephone Dearborn 2-7700
Chicago 2, Illinois

May 20, 1959

TO THE SHAREHOLDERS OF
CHICAGO TITLE AND TRUST COMPANY:

Your Directors today declared a special dividend, payable on June 10, 1959, in common stock of Chas. Pfizer & Co., Inc. at the rate of one share of Pfizer for each twenty shares of Chicago Title and Trust Company held of record May 26, 1959. The present market value of Pfizer stock indicates this dividend will be equivalent to about $2.00 per share on each share of Chicago Title and Trust Company stock outstanding. This dividend will be in lieu of the $1.00 per share extra which has been paid at the year-end in each of the last four years.

Each shareholder of Chicago Title and Trust Company who owns twenty shares or more will receive a stock certificate for the appropriate number of full shares of Pfizer stock. This stock will be registered in your name on June 10.

No fractional shares of Pfizer stock will be issued. Shareholders who own less than twenty shares of Chicago Title and Trust Company will be paid the value of the special dividend in cash. Similarly, other shareholders will receive cash for any shares they hold above a number evenly divisible by twenty. These cash payments will be based on the market value of Pfizer common stock on May 26.

You will later be advised for income tax purposes of the value of the Pfizer stock you receive. For individual shareholders this dividend will be taxable as ordinary income.

Chicago Title and Trust Company first purchased common stock of Chas. Pfizer & Co., Inc. in 1943, adding to its holdings in later years. Due to the phenomenal growth of Pfizer, our investment has been extremely profitable. Present market value is about thirty times original cost. Your company, individually and as trustee, will continue to hold Chas. Pfizer & Co., Inc. stock.

We have long followed a policy of adding all capital gains to reserves after appropriate taxes. These gains have not appeared in the Company's income account, nor have they been used to pay dividends, as they are not operating earnings, nor are they necessarily recurring. Your Board of Directors believes it is in the best interest of the shareholders to utilize this unusual capital gain as a special dividend.

The Board does not contemplate, for the foreseeable future, additional special dividends of this nature. No action on your part is required at this time.

Very truly yours,

Paul W. Goodrich

Paul W. Goodrich
President

EXHIBIT B.

CHICAGO TITLE AND TRUST COMPANY

111 W. Washington St. Telephone Dearborn 2-7700
Chicago 2, Illinois

June 10, 1959

To the Shareholders of
Chicago Title and Trust Company:

As reported to you on May 20, the Directors of our Company declared a special dividend in common stock of Chas. Pfizer & Co., Inc. This dividend is payable today at the rate of one share of Pfizer for each 20 shares of Chicago Title and Trust Company held of record May 26, 1959.

If you owned less than 20 shares of Chicago Title and Trust Company stock, we enclose a check to pay you the value of the appropriate fraction of one share of Pfizer stock. The value of one share was computed to be $36.8125, which was the mean between the high and low sales on the New York Stock Exchange on the record date, May 26, 1959. Dividing this by 20, results in the special dividend of $1.84 per share of Chicago Title and Trust Company stock when paid in cash.

If you owned 20 shares of Chicago Title and Trust Company or any even multiple of 20, you will find enclosed a stock certificate representing the number of shares of Pfizer stock to which you are entitled.

If the number of shares of Chicago Title and Trust Company you owned was more than 20 but not a number evenly divisible by 20, you will find enclosed both a stock certificate and a check for the fraction.

Shareholders who have given us special instructions for mailing dividend checks will find that these instructions have been carried out in relation to any portion of the special dividend paid in cash. That is, the check is not enclosed with this letter but has been mailed as instructed.

We have been advised by counsel that individuals, trusts and other non-corporate shareholders should include the dividend in their taxable incomes at the market value of Pfizer stock on the date distributed, June 10, 1959. To most *corporate shareholders*, the special dividend constituted a "dividend in kind" and in the opinion of our counsel should be valued at the lower of the market value or adjusted cost basis of the stock to Chicago Title and Trust Company. We acquired this stock prior to January 1, 1945; our adjusted cost basis is $1.50 per share. You will be informed within a few days what the market value was on June 10, for the purpose of income tax.

Very truly yours,

John Waddell

John Waddell
Treasurer

EXHIBIT NO. 1.

Placita--Superior Court of Cook County (Order).

UNITED STATES OF AMERICA

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

Pleas, before the Honorable Walker Butler one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County, and State, on the first Monday being the Second day of January, in the year of our Lord, one thousand nine hundred and sixty One and of the Independence of the United States of America, the one hundred and eighty Fifth.

Present:—The Honorable Walker Butler
Judge of the Superior Court of Cook County.
Daniel P. Ward, State's Attorney.

Attest: Theodore A. Swinarski, Clerk.
Frank G. Sain, Sheriff of Cook County.

Be it remembered; that heretofore, to wit: on the 2nd day of February in the year of our Lord one thousand nine hundred and sixty-one the same being one of the days of the January Term of the Superior Court of Cook County, the following among other proceedings were had in said Court and entered of record, to wit:

STATE OF ILLINOIS, }
COUNTY OF COOK } ss.

IN THE SUPERIOR COURT OF COOK COUNTY

CHARLES W. JAMIESON,
Plaintiff.

vs.

CHICAGO TITLE AND TRUST COMPANY, etc., et al.,
Defendants.

No. 60 S 9097
In Chancery

ORDER

This matter coming on to be heard in open court upon the complaint of plaintiff, Charles W. Jamieson, and the answer of defendant, Chicago Title and Trust Company, the plaintiff appearing pro se, and the defendant by counsel, and it appearing to the court that both parties hereto have submitted this cause to the court for judgment on the pleadings pursuant to sub-paragraph 5 of Section 45 of Chapter 110 of the Illinois Revised Statutes, and the court having fully considered the plaintiff's complaint, the defendant's answer, the written brief and reply brief filed herein by plaintiff and the written brief filed herein on behalf of the defendant, and the court having heard and considered oral argument by the plaintiff and by counsel on behalf of the defendant and the court being fully informed in the premises,

It Is Hereby Ordered, Adjudged And Decreed:

1. The court has jurisdiction of the subject matter hereof and of plaintiff, Charles W. Jamieson, and defendant, Chicago Title and Trust Company.

2. The written briefs filed herein by plaintiff and on behalf of the defendant be and they hereby are made a part of the record herein.

3. Judgment is hereby entered herein on the pleadings in favor of defendant, Chicago Title and Trust Company, and

4. This suit is hereby dismissed for want of equity.

Enter:

Walker Butler
Judge

EXHIBIT NO. 2.

48469

CHARLES W. JAMIESON,
Plaintiff-Appellant,
vs.
CHICAGO TITLE AND TRUST COMPANY, a corporation of Illinois, et al.,
Defendants-Appellees.

} Appeal from the Superior Court of Cook County

Mr. Justice Burman Delivered the Opinion of the Court.

Plaintiff in a chancery action claimed that the purchase of stock in another corporation by defendant, Chicago Title and Trust Company, was in violation of its trust to him as a stockholder. This appeal is from an order dismissing the complaint for want of equity.

The facts are not in dispute. The defendant, an Illinois corporation organized under the General Corporation Act, is engaged in the abstract, title insurance and trust business in Illinois. On May 20, 1959, defendant Trust Co. informed its stockholders by letter (a copy of which was attached to the complaint) of its investments over the years beginning with 1943 in the common stock of Chas. Pfizer & Co., Inc., a Delaware corporation. The letter stated that a special dividend had been declared payable on June 10, 1959, in the form of Pfizer stock at the rate of one share of Pfizer for each twenty shares of C.T. & T. Co., which meant that by market valuation, the dividend amounted to about $2.00 on each share of C.T. & T. Co. stock; that this dividend was in lieu of the $1.00 per share extra which had been paid at the year-end in each of the last four years; that due to the phenomenal growth of

Pfizer the investment was extremely profitable and the present market value was about thirty times the original cost; that the Company, individually and as trustee, would continue to hold Pfizer stock; that they followed a policy of adding capital gains to reserves—after appropriate taxes; that these gains have not appeared in the Company's income account, nor have they been used to pay dividends as they were not operating earnings, nor were they necessarily recurring; and that the Board of Directors believed it was in the best interest of the shareholders to utilize the unusual capital gain as a special dividend.

On June 10, 1959, the company sent a second letter (a copy of which was attached to the complaint) informing its stockholders that the dividend of Pfizer stock was now payable and advising them that they would be apprised of the adjusted cost basis to be used by them for income tax purposes.

Plaintiff, Charles W. Jamieson, owner of 100 shares of C.T. & T. Co., received a certificate in his name for 5 shares of Pfizer with a circular letter stating "this is your dividend." Jamieson returned the certificate and subsequent dividend checks paid on the Pfizer stock stating that said stock was not acceptable as a dividend. On May 3, 1960, Jamieson demanded by letter that the C.T. & T. Co. disburse to him his pro rata share of all Pfizer stock acquired by the company together with his pro rata share of all Pfizer dividends it had received plus interest at 5% compounded every time Pfizer Company paid a cash or stock dividend. The Trust Company responded by returning the 5 shares of Pfizer and the Pfizer dividends which Jamieson again returned to defendant.

This suit was filed pro se by Jamieson (an attorney) as a stockholder against defendant Trust Company, its

directors and treasurer. This is not a representative suit. The individual defendants were never served. The order dismissing the complaint recited that both parties submitted the cause for judgment on the pleadings pursuant to §45(5), ch. 110, Ill. Rev. Stat. (1959), and that after considering the complaint, answer, written briefs and oral argument, the Chancellor entered judgment on the pleadings in favor of the C.T. & T. Co. and dismissed the complaint for want of equity.

Jamieson contends principally that defendant secretly purchased foreign stocks as a speculation where by law the funds were required to be invested in government, state and municipal bonds. Such speculation he insists is a breach of trust which entitles him to an accounting and damages.

The prevailing doctrine is that a corporation has no power, either to subscribe for or purchase shares of stock in another corporation, unless such power is expressly conferred upon it by its charter or other statute. Section 5 of the Illinois Business Corporation Act, [Ill. Rev. Stat. ch. 32, §157.5 (1959)], however, provides in part, as follows:

"General Powers.

Each corporation shall have power:

. . . .

(g) To purchase, take, receive, subscribe for, or otherwise acquire own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships or individuals, . . .

. . . .

> (i) To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

Jamieson contends that since the defendant was incorporated before the adoption of the present Business Corporation Act of 1933, it does not have the power to invest in other corporations. We do not agree. Section 156 of the Corporation Act of 1933, which now appears as §157.156, ch. 32, Ill. Rev. Stat. (1959), reads:

> The provisions of this Act shall apply to all existing corporations . . . organized under any general law of this State providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this Act.

In *Lewis v. West Side Trust & Savings Bank*, 376 Ill. 23, the defendant corporation claimed its purchase of bank stock was *ultra vires* on the theory it had not accepted the power conferred by the 1919 act giving it the right and power to own stock in other corporations. The court in discussing the above-quoted provision, said, at pages 42, 43:

> . . . no reason appears to us why it should be necessary to include any of these powers in the charter before they could be exercised by a corporation. Since no method of accepting the 1919 act was provided, it was intended that it should at once apply to all corporations in this State . . . the 1919 act under discussion changed the public policy of this State and permitted corporations to hold stock of other companies for the first time. It was included in the general powers granted all corporations, and they would have the power to hold stock in the absence of a restriction in their charters.

See also, *Rockford Life Ins. Co. v. Production Press Inc.*, 15 Ill. App. 2d 50.

Jamieson in alleging a breach of trust averred that he has a proprietary interest in all of the assets of said Title and Trust Co.; that it would, therefore, take care of plaintiff's interests in a trust capacity; that he reposed full faith in and placed reliance and confidence upon the trust responsibility of said Title and Trust Company; and that plaintiff's claim is predicated upon an implied contract that defendant will hold undivided profits in cash and in trust for the use and benefit of plaintiff in distribution as dividends and extra dividends. The prayer of the complaint is that Jamieson's pro rata share of Pfizer be impressed with a trust in his favor and that all stock and cash dividends paid by Pfizer on his pro rata share be returned over to him with 5% interest compounded every time Pfizer Company paid a cash or stock dividend.

Directors and other officers, while not trustees in the technical sense in which that term is used, occupy a fiduciary relation to the corporation and to stockholders. At common law, and by modern current of authority in this country and in England, the directors of a private corporation, while not regarded as trustees in the strict sense, are considered in equity as bearing a fiduciary relation to the corporation and its stockholders. 3 Fletcher, Private Corporations 838 (rev. perm. ed. 1950). In other words, it is universally recognized that courts of equity treat the relationship of director and stockholder as a trusteeship, in order to determine the rights, duties and liabilities of the directors.

No claim is made in the complaint that the Company is insolvent by reason of this purchase; that the directors committed fraud; that the stock was worth less than the purchase price; or that it injuriously affected the company or its capital or was made for the personal gain of

directors in derogation of the interests of the company. The bare assertion that the stock purchase was a speculation and that it was therefore a breach of trust is a *conclusion of law* and not an *allegation of fact*, (*Brady* v. *Collom*, 65 A.2d 450) and is not admitted by motion for judgment on the pleadings. Since the purchase of Pfizer stock of which Jamieson complains was authorized by statute, we can find no breach of trust or duty arising from the facts alleged in the complaint.

After careful consideration, we find plaintiff's other contentions to be without sufficient merit to warrant discussion. The decree of the Superior Court is affirmed.

Decree Affirmed.

Murphy, P. J. and English, J. Concur.

Abstract Only.

EXHIBIT NO. 3.

UNITED STATES OF AMERICA

State of Illinois,
Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of May in the year of our Lord, one thousand nine hundred and sixty-two, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice

Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Ray J. Klingbiel — Justice Byron O. House
Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

Be It Remembered, that, to-wit: on the 24th day of May 1962, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

Charles W. Jamieson, Petitioner	*Petition for Leave to Appeal from Appellate Court*
No. 37160 vs.	
Chicago Title and Trust Co., a corporation of Illinois, et al., Respondents	First District 60 S 9697 48469

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being

now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioner costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 5th day of October, 1962.

Mrs. Earle Benjamin Searcy

Clerk.

Supreme Court of the State of Illinois.

(Seal)

EXHIBIT NO. 4.

APPENDIX

Statutes involved in the case

Business Corporation Act

Chap. 32 Illinois State Bar Assn. Edition, 1961

Sec. 5(d) Page 1333
5(g)

Sec. 41 Page 1340
41(c)

Sec. 52 / Unnoticed or disregarded by Appellee
52(c) \ Page 1344

Also, please see appended, mentioned in the text

Chap. 73 Insurance Code

Sec. 204.15 In Vol. 2 of said State Bar Assn Edition

Chap. 121½ Secs. 104, 105 and 106 in effect in 1943 and 4 when Pfizer stock was bought and in July 13, 1933, when the Business Corp. Act. was made the law.
This was the Securities Act since repealed in July 13, 1953.

Chap. 148 The Wills Act

Sec. 32 found on page 2460 Vol. 2 of the above statutes
3210 found on pages 2460 and 2461

Art. 4, Sec. 13 Of the Constitution of the State of Illinois will be found on page 11, Vol. 1 of said statutes.

The Constitution of the United States follows the State Constitution in the same Vol. 1 aforesaid.